Cambridge Tool & Mfg. Co., Inc. *and* International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO, Petitioner. Case 1–RC–20087

March 10, 1995

DECISION, DIRECTION, AND DIRECTION OF SECOND ELECTION

BY MEMBERS BROWNING, COHEN, AND TRUESDALE

The National Labor Relations Board, by a three-member panel, has considered determinative challenges in, and objections to, an election held on April 7, 1994, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 105 for and 103 against the Petitioner, with 4 challenged ballots.[1]

The Board has reviewed the hearing officer's findings in light of the exceptions and briefs and has decided to adopt the hearing officer's findings[2] and recommendations only to the extent consistent with the decision below.

The hearing officer found that the Employer engaged in three incidents of misconduct relating to two unit employees, 2 to 3 weeks before the election. The misconduct involved interrogation of one employee by a high-ranking management official, regarding his union sympathies; threats by a supervisor to a known union supporter that the employee could be terminated for talking about union business during working time; and disparate application of rules involving distribution of union literature. The hearing officer concluded that this conduct was de minimis because none of the conduct was disseminated to other unit employees and the misconduct did not have a significant impact on employees' union activities. She concluded that it was therefore virtually impossible for the alleged misconduct to have affected the results of the election. We disagree.[3]

The test, an objective one, is whether the conduct of a party to an election has the tendency to interfere with the employees' freedom of choice.[4] In making its determination as to whether the conduct has the tendency to interfere with employees' freedom of choice, the Board will consider, inter alia, the closeness of the election. *Hopkins Nursing Care Center*, 309 NLRB 958 (1992).[5] Here, if both of the challenged ballots that are to be counted are against the Petitioner, then a switch of one vote to oppose the Petitioner would have been decisive. In these circumstances, we find that the three instances of objectionable conduct could well have affected the outcome of the election. We therefore find the objectionable conduct was not de minimis and did tend to interfere with results of the election.

Accordingly, the Board issues the following direction.

DIRECTION

IT IS DIRECTED that, as part of the investigation to ascertain a representative for the purposes of collective bargaining among certain employees of Cambridge Tool & Mfg. Co., Inc., in the designated appropriate bargaining unit, the Regional Director for Region 1 of the National Labor Relations Board shall, pursuant to the Board's Rules and Regulations, within 14 days from the date of this direction, open and count the ballots of Darlene Hamilton and David Gonsalves, and thereafter, prepare and cause to be served on the parties a revised tally of ballots. In the event the revised tally of ballots shows that the Petitioner has received a majority of the valid ballots cast, the Petitioner's objections will be moot and the Regional Director shall issue a certification of representative.

However, in the event the revised tally of ballots shows that the Petitioner has not received a majority of the valid ballots cast, the following shall be applicable:

IT IS DIRECTED that the election conducted on April 7, 1994, be set aside and a second election conducted.

[Direction of Second Election omitted from publication.]

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[1] In the absence of exceptions the Board adopts, pro forma, the hearing officer's recommendation that the challenge to the ballot of Edward McDonagh be sustained.

[2] The parties have excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

[3] In light of our decision, we find it unnecessary to decide whether, as contended by the Petitioner, Supervisor Sousa's interrogation of employee Duong also constituted objectionable conduct.

[4] The hearing officer erroneously relied on the fact that Supervisor Photio's threats to employee McCarter did not alter McCarter's behavior, i.e., McCarter continued to engage in open and pronounced union activities until the date of the election. The fact that a threat does not produce the desired result does not mean that there was no threat.

[5] In this regard, the hearing officer's reliance on *Metz Metallurgical Corp.*, 270 NLRB 889 (1984), and *Kleen Brite Laboratories*, 292 NLRB 747 (1989), is misplaced. Those cases are factually distinguishable as neither involved a close election. In *Metz*, the vote was 53 for and 77 against the petitioner, with 1 challenge. In *Kleen Brite*, the vote was 143 for and 83 against the petitioner with 3 challenged and 1 void ballot.